

CITY COUNCIL AGENDA REPORT

SUBJECT: Authorize Director of General Services Department to sign an Agreement with Dynamics Consulting Engineers, Inc. to provide consultant engineering services for the completion of the Emerson Avenue Rehabilitation Project.

AGENDA DATE: May 20, 2009

PREPARED BY: Nick Fenley, Director of General Services Department
Veronica Atondo, P.E., Interim Engineering Manager

APPROVED FOR AGENDA BY: Ralph Velez, City Manager

RECOMMENDATION: It is recommended the City Council approve the following:
Authorize Director of General Services Department to Sign an Agreement with Dynamics Consulting Engineers to provide engineering consultant services for the completion of the survey and design of the Emerson Rehabilitation Project

FISCAL IMPACT: \$20,000.00 (Measure "D" Funding)

BACKGROUND INFORMATION: (Prior action/information)

The City of Calexico is proposing to Emerson Avenue Rehabilitation as a "shovel ready project." The project estimated construction cost amount is \$1,200,000.00. The City is expecting to receive American Recovery and Reinvestment Act (ARRA) funding in the amount of 895,000.00 for the construction of this project. As part of the requirements for the ARRA projects the City must obtain approval for funding obligation by June 2009. In order to have the design, plans and specifications completed by June 2009 the General Services Director is recommending the execution of the attached agreement for Professional Engineering Consultant Services for the subject project.

DISCUSSION (Current consideration):

Based on the City Council pre-approved list of consultants for "On Call Professional Engineering Services" and its qualifications, City staff recommends Dynamics Consulting Engineers, Inc. as the Engineering Consultant firm for the subject project. Due to the time constraints, it is essential that the City Council approve the recommendation set forth in order to avoid losing said funding.

DOCUMENT(S) ATTACHED:

1. Standard Agreement for Professional Engineering Consultant Services
2. Council Approved List of "On Call Professional Engineering Services"

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AGREEMENT FOR PROFESSIONAL SERVICES

This Agreement is made and entered into as of the ___ day of _____, 2009, by and between the City of Calxico ("City") and Dynamics Consultants Engineers, Inc., ("Consultant").

RECITALS

A. Consultant is specially trained, experienced and competent to perform the special services which will be required by this Agreement; and

B. Consultant possesses the skill, experience, ability, background, certification and knowledge to provide the services described in this Agreement on the terms and conditions described herein.

AGREEMENT

1. Scope of Services. The Consultant shall furnish the following services in a professional manner. Consultant shall perform the services described on Exhibit A which is attached hereto and incorporated herein by reference. Consultant shall provide said services at the time, place, and in the manner specified in Exhibit A, subject to the direction of the City through its staff that it may provide from time to time.

2. Time of Performance. The services of Consultant are to commence upon execution of this Agreement and shall continue until all authorized work is approved by the City. All such work shall be completed no later than December 30, 2009. Time is of the essence for every provision of this agreement that states a time for performance and for every deadline imposed by the City.

3. Compensation. Compensation to be paid to Consultant shall be in accordance with the Schedule of Charges set forth in Exhibit B, which is attached hereto and incorporated herein by reference. In no event shall Consultant's compensation exceed \$ 19,700.00 without additional authorization from the City. Payment by City under this Agreement shall not be deemed a waiver of defects, even if such defects were known to the City at the time of payment.

4. Method of Payment. Consultant shall submit monthly billings to City describing the work performed during the preceding month. Consultant's bills shall include a brief description of the services performed, the date the services were performed, the number of hours spent and by whom, and a description of any reimbursable expenditures. City shall pay Consultant no later than 30 days after approval of the monthly invoice by City staff. When payments made by City equal 90% of the maximum fee provided for in this Agreement, no further payments shall be made until the final work under this Agreement has been accepted by City.

5. Ownership of Documents. All plans, studies, documents and other writings prepared by and for Consultant, its officers, employees and agents and subcontractors in the course of implementing this Agreement, except working notes and internal documents, shall become the property of the City upon payment to Consultant for such work, and the City shall have the sole right to use such materials in its discretion without further compensation to Consultant or to any other party. Consultant shall, at Consultant's expense, provide such reports, plans, studies, documents and other writings to City upon written request.

6 Independent Contractor. It is understood that Consultant, in the performance of the work and services agreed to be performed, shall act as and be an independent contractor and shall not act as an agent or employee of the City. Consultant shall obtain no rights to retirement benefits or other benefits which accrue to City's employees, and Consultant hereby expressly waives any claim it may have to any such rights.

7. Interest of Consultant. Consultant (including principals, associates and professional employees) covenants and represents that it does not now have any investment or interest in real property and shall not acquire any interest, direct or indirect, in the area covered by and during this Agreement or any other source of income, interest in real property or investment which would be affected in any manner or degree by the performance of Consultant's services hereunder. Consultant further covenants and represents that in the performance of its duties hereunder no person having any such interest shall perform any services under this Agreement.

Consultant is not a designated employee within the meaning of the Political Reform Act because Consultant:

- a. will conduct research and arrive at conclusions with respect to his/her rendition of information, advice, recommendation or counsel independent of the control and direction of the City or of any City official, other than normal agreement monitoring; and
- b. possesses no authority with respect to any City decision beyond rendition of information, advice, recommendation or counsel. (FPPC Reg. 18700(a)(2).)

8. Professional Ability of Consultant. City has relied upon the professional training and ability of Consultant to perform the services hereunder as a material inducement to enter into this Agreement. Consultant shall therefore provide properly skilled professional and technical personnel to perform all services under this Agreement. All work performed by Consultant under this Agreement shall be in accordance with applicable legal requirements and shall meet the standard of quality ordinarily to be expected of competent professionals in Consultant's field of expertise.

9. Indemnity. Consultant [or however design professional is referenced] agrees to indemnify, including the cost to defend, the City, and its officers, agents and employees from any and all claims, demands, costs or liability that arise out of, or pertain to, or relate to the

negligence, recklessness, or willful misconduct of Consultant and its agents in the performance of services under this contract. This indemnity does not apply to liability for damages for death or bodily injury to persons, injury to property, or other loss, damage or expense arising from the sole negligence, willful misconduct or defects in design by the City or its agents, servants, or independent contractors who are directly responsible to the City, or the active negligence of the City.

10. Insurance Requirements.

a. Consultant, at Consultant's own cost and expense, shall procure and maintain, for the duration of the contract, the following insurance policies.

i. Workers' Compensation Coverage. Consultant shall maintain Workers' Compensation Insurance and Employer's Liability Insurance for his/her employees in accordance with the laws of the State of California. In addition, Consultant shall require each subcontractor to similarly maintain Workers' Compensation Insurance and Employer's Liability Insurance in accordance with the laws of the State of California for all of the subcontractor's employees. Any notice of cancellation or non-renewal of all Workers' Compensation policies must be received by the City at least thirty (30) days prior to such change. The insurer shall agree to waive all rights of subrogation against City, its officers, agents, employees and volunteers for losses arising from work performed by Consultant for City. This provision shall not apply if Consultant has no employees performing work under this Agreement. If the Consultant has no employees for the purposes of this Agreement, Consultant shall sign the "Certificate of Exemption from Workers' Compensation Insurance" which is attached hereto as Exhibit C.

ii. General Liability Coverage. Consultant shall maintain commercial general liability insurance in an amount not less than one million dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage. If a commercial general liability insurance form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit.

iii. Automobile Liability Coverage. Consultant shall maintain automobile liability insurance covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with the work to be performed under this Agreement, including coverage for owned, hired and non-owned vehicles, in an amount of not less than one million dollars (\$1,000,000) combined single limit for each occurrence.

- iv. Errors and Omissions Liability. Consultant shall maintain errors and omissions liability insurance for all work performed under this Agreement in an amount of not less than one million dollars (\$1,000,000).
- b. Policy Endorsements. Each general liability and automobile liability insurance policy shall be with insurers possessing a Best's rating of no less than A:VII and shall be endorsed with the following specific language:
- i. The City of Calexico, its elected or appointed officers, officials, employees, agents and volunteers are to be covered as additional insureds with respect to liability arising out of work performed by or on behalf of the Consultant, including materials, parts or equipment furnished in connection with such work or operations.
 - ii. This policy shall be considered primary insurance as respects the City, its elected or appointed officers, officials, employees, agents and volunteers. Any insurance maintained by the City, including any self-insured retention the City may have, shall be considered excess insurance only and shall not contribute with it.
 - iii. This insurance shall act for each insured and additional insured as though a separate policy had been written for each, except with respect to the limits of liability of the insuring company.
 - iv. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its elected or appointed officers, officials, employees, agents or volunteers.
 - v. The insurance provided by this policy shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) days written notice has been received by the City.
- c. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. At the City's option, Consultant shall demonstrate financial capability for payment of such deductibles or self-insured retentions.
- d. Certificates of Insurance and Endorsements. Consultant shall provide certificates of insurance with original endorsements to City as evidence of the insurance coverage required herein. Certificates of such insurance shall be filed with the City on or before commencement of performance of this Agreement. Current certification of insurance shall be kept on file with the City at all times during the term of this Agreement.

12. Licenses. Consultant represents and warrants to City that it has all licenses, permits, qualifications, insurance and approvals of whatsoever nature which are legally required of Consultant to practice its profession. Consultant represents and warrants to City that Consultant shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement, any licenses, permits, insurance and approvals which are legally required of Consultant to practice its profession. Consultant shall obtain a City of Calxico Business License.

14. Written Notification. Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party shall be in writing and either served personally or sent prepaid, first class mail. Any such notice, demand, etc. shall be addressed to the other party at the address set forth herein below. Either party may change its address by notifying the other party of the change of address. Notice shall be deemed communicated within 48 hours from the time of mailing if mailed as provided in this section.

If to Consultant: Dynamics Consultant Engineers, Inc.
Desert Gardens Drive, El Centro CA 92243

a. Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to City for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Consultant to this Agreement.

c. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours.

upon written request by the City Manager, City Attorney, City Auditor or a designated representative of these officers. Copies of such documents shall be provided to the City for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Consultant's address indicated for receipt of notices in this Agreement.

d. Where City has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of Consultant's business, City may, by written request by any of the above named officers, require that custody of the records be given to the City and that the records and documents be maintained in City Hall. Access to such records and documents shall be granted to any party authorized by Consultant, Consultant's representatives, or Consultant's successor-in-interest.

16. Entire Agreement. This Agreement constitutes the complete and exclusive statement of Agreement between the City and Consultant. All prior written and oral communications, including correspondence, drafts, memoranda, and representations, are superseded in total by this Agreement.

17. Amendments. This Agreement may be modified or amended only by a written document executed by both Consultant and City and approved as to form by the City Attorney.

18. Waiver. No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder.

19. Execution. This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

20. Assignment and Subcontracting. The parties recognize that a substantial inducement to City for entering into this Agreement is the professional reputation, experience and competence of Consultant. Assignments of any or all rights, duties or obligations of the Consultant under this Agreement will be permitted only with the express consent of the City. Consultant shall not subcontract any portion of the work to be performed under this Agreement without the written authorization of the City. If City consents to such subcontract, Consultant shall be fully responsible to City for all acts or omissions of the subcontractor. Nothing in this Agreement shall create any contractual relationship between City and subcontractor nor shall it create any obligation on the part of the City to pay or to see to the payment of any monies due to any such subcontractor other than as otherwise is required by law.

21. Termination. This Agreement may be terminated immediately for cause or by either party without cause upon fifteen days' written notice of termination. Upon termination, Consultant shall be entitled to compensation for services performed up to the effective date of termination.

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IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first written above.

CITY OF CALEXICO:

CONSULTANT:

Ralph Velez
City Manager

Dynamics Consulting Engineers, Inc.

APPROVED AS TO FORM:

ATTEST:

Jennifer M. Lyon
City Attorney

Lourdes Cordova
City Clerk

EXHIBIT A

SCOPE OF SERVICES

RE: Design for Emerson Avenue from SR98 to Third Street

Dynamic Consulting Engineers, Inc (DCE) is pleased to present you with this cost proposal for street design. The City of Calxico intends to overlay Emerson Avenue from SR98 to Third Street using ARAM and conventional AC Pavement. The project will include the replacement of curb and gutter in some areas on the east side of Emerson Avenue between SR98 and 7th Street to allow for proper drainage. This will prevent water damage to the newly overlaid road.

Proposed Scope of Work:

1. DCE will complete a topographic survey for the design of the project. The intent of the survey is to identify portions of the proposed project that need replacement because of poor drainage. The topographic survey will include the horizontal and elevations of the following existing items where needed: Flow line of gutter, curbs, existing driveways, sidewalks, trees, fences, AC pavement. The survey may need to go outside of the project boundaries to determine the existing flow patterns. The information and features picked up in the field survey will be placed in an AutoCAD drawing and delivered to the City.
2. DCE will prepare the design documents, plans and specifications. DCE will identify areas of curb and gutter that appear to require replacement and submit them for approval by the City for inclusion in the project.
3. Some areas of sidewalk along Emerson that appear to require replacement may be included in the design. Some driveways may need to be replaced to match the grade of the new curb and gutter.
4. DCE will help City staff on the preparation of the project specifications and documents per Caltrans standards and Local Assistance Procedures Manual.
5. DCE will prepare a cost estimate for the project and submit to the City for review. If desired, the project can be separated with additive/deductive bid items to ensure that the project can be completed with the available funding.

FEE PROPOSAL

DCE will provide the services mentioned in the scope of work for a fee not to exceed **\$19,700.00**. This will be billed time and materials, based on the DCE schedule of rates hereto attached. Again, thank you for giving Dynamic Consulting Engineers, Inc the opportunity to serve you.



EXHIBIT B

SCHEDULE OF CHARGES

Dynamic Consulting Engineers, Inc

FEE SCHEDULE FOR PROFESSIONAL SERVICES - 2009

Personnel	Hourly Rate
Principal Engineer	\$110.00
Senior Civil Engineer	\$105.00
Project Engineer II	\$95.00
Project Engineer I	\$85.00
Staff Engineer	\$75.00
Survey Crew	\$120.00
2 Man Survey Crew	\$140.00
Civil Designer	\$71.00
CAD Technician	\$60.00
Administrative Assistant	\$44.00

EXHIBIT C

CERTIFICATE OF EXEMPTION FROM WORKERS' COMPENSATION INSURANCE

I hereby certify that in the performance of the work for which this Agreement is entered into, I shall not employ any person in any manner so as to become subject to the Workers' Compensation Laws of the State of California.

Executed on this _____ day of _____, 2005, at _____,
California.


Consultant

Attachment No. 2
Council Approved List of "On Call Professional Engineering Services"

CITY COUNCIL AGENDA REPORT

SUBJECT: City Council Resolution Approving List of Selected Consultants for
"On-Call Professional Engineering Services"

AGENDA DATE: January 26, 2009

PREPARED BY: Armando G. Villa, Director of Development Services Department 

APPROVED FOR AGENDA BY: Ralph Velez, City Manager

RECOMMENDATION: Adoption of a Resolution of the City Council of the City of
Calexico Approving the List of Selected Consultants for "On-Call Professional
Engineering Services"

FISCAL IMPACT: None

BACKGROUND INFORMATION: (Prior action/information):

A Request for Statements of Interest and Qualifications for On-Call Professional Engineering Services was advertised in June of 2008 with the purpose to provide the city with the ability to obtain assistance quickly during peak workloads periods, staffing absences and to satisfy City Scheduling needs when expedited/fast track support is needed. The Statements of Qualifications were reviewed by the Evaluation Panel integrated by the City staff from Utility Services Department, General Services Department and Development Services Department.

DISCUSSION (Current consideration):

The Evaluation Panel ranked the Consultants that submitted their Statements of Qualifications according to the selection criteria stated on the Request for Statements of Interest and Qualifications for On-Call Professional Engineering Services. The attached Resolution Approves the List of Selected Consultants for "On-call Professional Engineering Services." The Resolution also authorizes the City Manager to sign "On-call Engineering Professional Agreement" with one or more of the Selected Consultants for contracts of less than \$10,000.00, upon approval of Scope of Services and Fees when deemed necessary.

Enclosure:

Resolution 2009-_____

Agenda Item No. _____

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RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CALEXICO
APPROVING A LIST OF SELECTED CONSULTANTS FOR "ON-CALL PROFESSIONAL
ENGINEERING SERVICES"

WHEREAS, it is necessary for the City Council of the City of Calexico, California, (hereinafter referred to as "City Council") to approve the list of consultants for "On-Call Professional Engineering Services" that the City intends to utilize when projects cannot be completed by City personnel or when the complexity of the project requires additional expertise; and

WHEREAS, the City Council finds that its approval of said list of "On-Call Professional Engineering Services" is in the best interest of the City of Calexico, California; and

WHEREAS, the City of Calexico, requested Statements of Interest and Qualifications (SOQ's) to provide As Needed, On-Call Professional Engineering Services to the City of Calexico per Exhibit C, and these services will be on intermittent basis; and

WHEREAS, the selected consultants will provide the City with the ability to obtain assistance quickly during peak workloads periods, staffing absences and to satisfy City scheduling needs when expedited/fast track support is needed; and

WHEREAS, it is the City's intent to contract with more than one consultant for these services from the list of "On-Call Professional Engineering Services" Consultants; and

WHEREAS, the Evaluation Panel was formed by City Staff to evaluate all the Statements of Qualifications submitted to the City Clerk according to the Request for Statements of Interest and Qualifications published on June 24, 2008; and

WHEREAS, the Evaluation Panel prepared a short list based strictly on the qualification, expertise and availability of the proposed personnel and firm; and

WHEREAS, the Consultant shall be required to execute the City of Calexico Standard Consultant Agreement; and

WHEREAS, the City will have sole discretion as to which projects, if any, will be assigned to any selected Consultants. The City reserves the right to request and require additional detailed proposals from its on-call consultants to assist in the selection of a consultant of particular projects. The City also reserves the right to advertise via competitive Request for Proposals (RFP) any project it deems appropriate. On-Call Consultants will be afforded the opportunity to submit proposals on any advertised RFP; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CALEXICO, CALIFORNIA, DOES HEREBY RESOLVE AS FOLLOWS:

1. That the attached list of consultant firms will be utilized on as-needed and rotating basis by the City of Calexico for two years.

2. That the Development Services Department will periodically update the solicitation list and will bring it back to the City Council for Approval.
3. That Individual contracts to be executed on a project-by-project basis will still be brought to City Council for approval if the amount of contract exceeds \$10,000.00.
4. That the City Manager of the City of Calexico, California, is hereby authorized to sign On-call Engineering Professional Service Agreements for Professional Services for contracts of less than \$10,000.00 as is provided for in the City's Purchasing Policy with any of the consultants on the list of selected consultants per Exhibit "A." A copy of the subject Agreement is on Exhibit "B" and it will be on file in the office of the City Clerk, on behalf of the City of Calexico, California.

PASSED AND ADOPTED, at a regular meeting of the City Council of the City of Calexico, California, held on the ____ day of _____, 2009.

CITY OF CALEXICO

LOUIS FUENTES, MAYOR

ATTEST:

LOURDES CORDOVA, CITY CLERK

APPROVED AS TO FORM:

JENNIFER M. LYON, CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF IMPERIAL) ss
CITY OF CALEXICO)

I, Lourdes Cordova, City Clerk of the City of Calexico, California, do hereby certify that the foregoing Resolution No. 2009-_____ was duly and regularly adopted at a regular meeting of the City Council of the City of Calexico, California held on the 3rd day of February, 2009, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAINED:

(SEAL)

LOURDES CORDOVA, CITY CLERK

EXHIBIT A

**List of Selected Consultants for On-Call Professional Engineering Services
CITY OF CALEXICO COUNCIL RESOLUTION 2009-____**

LIST OF SELECTED CONSULTANTS FOR
ON-CALL PROFESSIONAL ENGINEERING SERVICES

Ranking Prepared by Evaluation Panel Based on the Evaluation Criteria

1. KOA Corporation Planning & Engineering
2. Tetra Tech, Inc
3. W2 Design, Inc
4. Dynamic Consulting Engineers, Inc.
5. FUSCOE Engineering
6. Development Design & Engineering, Inc
7. Pro Terra Engineering & Surveying